



## Banning of Unregulated Deposit Schemes Ordinance 2019

Just a while ago on 21st of February, 2019, Government of India took a step to ban unregulated deposits by releasing the *"Banning of Unregulated Deposit Schemes Ordinance 2019"*.

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## **Banning of Unregulated Deposit Schemes Ordinance 2019**

**J**ust a while ago on 21st of February, 2019, Government of India took a step to ban unregulated deposits by releasing the ***“Banning of Unregulated Deposit Schemes Ordinance 2019”***. This ordinance has been passed by the Government with the motive to formalize the deposit-taking activities in the country and to protect unaware investors from unregulated deposit schemes or you may also call it Ponzi schemes. This step will keep deposit taking activities under control and it will also punish unlawful deposit taking activities. Lok Sabha has given its assent on this bill through a voice-vote on the basis of the Cabinet’s request to the President.

So let’s take a closer look of this Ordinance.

### **Applicability & Objective of the “Banning of Unregulated Deposit Schemes Ordinance 2019”**

The ordinance is applicable on whole of India except Jammu & Kashmir with effect from 21st February, 2019. It has been issued under clause (1) of Article 123 of the Constitution of India. This bill was passed on 13th February, 2019 by the Parliament. This ordinance announced by the President of India as it could not be taken up for consideration in Rajya Sabha. The main objective of this ordinance is to ban unregulated deposits schemes as well as to protect the interest of depositors.

### **Need of “Banning of Unregulated Deposit Schemes Ordinance 2019”**

As per the laws enacted by the government, there are various non-banking entities which are eligible to raise public deposits. However, in India the regulatory framework for carrying deposit-taking activities is not harmonious which results in unauthorized collection of money. Thus, there was a need of introduction of this ordinance. This fresh ordinance will keep an eye on the deposit-taking activities in India and will also penalize instance of soliciting, activity of accepting deposits in relation to unregulated deposit scheme.

## On whom this ordinance is applicable?

The ordinance is applicable on deposit takers who are involved in the deposit taking activities through regulated or unregulated deposit schemes.

## Purpose of the “Banning of Unregulated Deposit Schemes Ordinance 2019”

The main purpose of this scheme is to ban “Unregulated Deposit Schemes”. Deposit taking activities under Unregulated Deposit Schemes are banned from now onwards.

The ordinance said that

“No deposit taker shall directly or indirectly promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an unregulated deposit scheme”

## Creation of type of Offences to Regulate the Deposits under Ordinance

To regulate the deposits in the country, the statute created the following types of offences:

### ✔ **Fraudulent Default in Regulated Deposit Scheme**

In pursuant to a Regulated Deposit Scheme, it has been ordered to deposit acceptors to not commit any fraudulent default in the repayment of deposit at the time of maturity. They are also ordered to render any specified services which they have promised to render against such deposit.

## ✔ **Wrongful Inducement Concerning Unregulated Deposit**

To make another person member or participant of unregulated deposit scheme, no false statement or promise shall be made along with this; facts shall not be mislead in order to inducing another person.

## ✔ **Carrying out Unregulated Deposit Schemes**

Unregulated Deposit Scheme means a scheme which is banned under the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. Any person pursuant to such schemes is liable to be punished under the Ordinance.

### **Leading Provisions of “Banning of Unregulated Deposit Schemes Ordinance 2019”**

#### ✔ **Provisions regarding availing of Deposits**

Under this Ordinance, it is prohibited for individuals or group of individuals to avail deposit or loans from a person other than relatives. While partnership firms can avail deposits or loans from relatives or partners only.

#### ✔ **Penalty Provisions**

The penalty provisions are prescribed under the ordinance in case of any default is made. The fine may range from Rs. 2 lakhs to Rs. 50 crores along with the imprisonment of one to ten years. Likewise it contains adequate provisions of the repayment of deposits for depositors in such instances where unregulated schemes try to raise deposits in unlawful manner.

#### ✔ **Provisions regarding Attachment of Properties**

For the repayment of deposits, the ordinance prescribes the provisions regarding the attachment of properties / assets and its subsequent realization.

## ✔ Provisions regarding Maintenance of Database

It is crucial to track deposit taking activities in India therefore Central Government may nominate an authority for maintaining and operating an online database of deposit taking activities in India.

## ✔ Intimation of Business to the Concerned Authority

This ordinance is making compulsory for deposit takers to intimate the concerned authority about the deposit taking activities in the prescribed manner. In case such concerned authority found that deposits are being accepted in pursuant of Unregulated Deposit Scheme then it may ask for furnishing necessary information.

### What are the powers of Police Officers in this regard?

A police officer is authorized to initiate proceedings against suspected defaulter who made default in complying with the provisions of ordinance but that police officer must not be below the officer-in-charge of a police station.

As it is clear from the above that the officer is authorized to initiate proceedings, he/she may make essential seizures of records or property, and may take the defaulter into custody in order to produce such person in court. In case officer cannot enforce seizure then a written order may be produced regarding the freeze of the property, account, deposits or valuable securities of the deposit taker. Nonetheless, searches & seizures and arrests conducted must comply with the provisions of the Code of Criminal Procedure, 1973.

### Key Observations

- ✔ Loans obtained during the course of business will not constitute deposit;
- ✔ Central Government may nominate an authority for maintaining and operating an online database of deposit taking activities in India as per section 9 of the ordinance;

- ✔ Deposit taker has to pay due amount of the depositors in priority, prior to the payment of debts, revenue, taxes and cesses;
- ✔ In case of any contravention, Central Bureau of Investigation (CBI) will look after the matter;
- ✔ Under this ordinance, a search can be conducted by the police officer in charge of police station without any warrant.

*"In our opinion the proposed ordinance will control the illicit deposit taking activities in the country which are currently manipulating the regulatory gaps."*

Well for better understanding of this article, it is important to get knowledge of crucial terms;

## **What are the Unregulated Deposit Schemes?**

Unregulated Deposit Schemes are those types of schemes under which deposits are accepted through unregulated deposit scheme which is prescribed under first schedule column (3). These are the schemes which are not registered with the government.

## **What are the Regulated Deposit Schemes?**

Regulated Deposit Schemes are those types of schemes which are regulated by the regulatory authorities like SEBI, RBI, IRDA, NHB and PFRDA, EPFO etc. These types of schemes are defined under column (3) of the first schedule.

## **What is covered under Deposits?**

According to ordinance, deposit means amount of money received in the following manner:

- ✓ Money received by way of advance;
- ✓ Money received by way of loan;
- ✓ Money received in any other form;

*"with a promise to return after some time in cash or in kind or in any other form with or without any benefit in the form of interest, bonus, and profit or in any other form."*

## Who fall under the definition of Relatives?

As per Companies Act, 2013, the definition of relative covers:

- ✓ Members of the Hindu Undivided Family;
- ✓ Husband & Wife;

For someone to be a relative of another, they have to be the following below mentioned:

- ✓ Father
- ✓ Mother
- ✓ Son
- ✓ Daughter
- ✓ Brother
- ✓ Sister
- ✓ Daughter in law
- ✓ Son in law

## Who fall under the category of Depositors?

- ✓ An Individual
- ✓ Hindu Undivided Family
- ✓ Company
- ✓ Trust
- ✓ Partnership Firm
- ✓ Limited Liability Partnership
- ✓ AOP (Association of Persons)
- ✓ Co-operative Society
- ✓ Every other artificial judicial person



## Takeaway

This ordinance has been introduced by the government to protect the interest of investors from the unregulated deposit schemes. This step will surely eliminate the illicit deposit taking activities. Thus, we really appreciate the intent of the government of curbing the black money from economy. This is an applaudable step taken by the government after the implementation of the GST and Demonetization. Also, this ordinance will create roadblock for regular businesses. Likewise, deposits can be accepted by LLP from partners in the form of “partner’s capital contribution” and not in the form of “loans” while partnership firms can accept loans from relatives of partners in place of partners. So, the acceptance of deposits under unregulated deposits scheme will result in freezing of assets and imprisonment / fine penalty of defaulter.

I hope this article has given you relevant information on recent ordinance issued by the government. For more information, please contact us at [info@enterslice.com](mailto:info@enterslice.com)



**Thank You!**

